



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

Kendrick E. Duldulao, M.D.; Decision and Order

On January 29, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Kendrick E. Duldulao, M.D. (hereinafter, Registrant) of Tampa, Florida. OSC, at 1. The OSC proposed the revocation of Registrant’s Certificate of Registration No. FD0005593. It alleged that Registrant is without “authority to handle controlled substances in Florida, the state in which [Registrant is] registered with DEA.” OSC, at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on or about May 23, 2019, the U.S. District Court for the Middle District of Florida found Registrant guilty of one count of Conspiracy to Distribute and Dispense Controlled Substances in violation of 21 U.S.C. 846. OSC, at 1. Following the conviction, the State of Florida Department of Health (hereinafter, the Florida Department of Health) issued an Order of Emergency Suspension of License on November 18, 2019. OSC, at 2. This Order, according to the OSC, immediately restricted Registrant’s Florida medical license based on the Registrant’s conviction. *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated March 9, 2021, a Diversion Investigator (hereinafter, DI) assigned to the DEA Miami Field Division, Tampa District Office, stated that the first attempt to serve the OSC to Registrant at his registered address was “returned via USPS as undeliverable as

[Registrant] was no longer at the address and he left no forwarding information.” Request for Final Agency Action (hereinafter, RFAA), App. 6 (Declaration of DI), at 2; *see also* App. 5 (Copy of Return to Sender Envelope). The DI further stated that following the first unsuccessful service attempt, he and others from the Tampa District Office attempted to contact and personally serve the OSC on Registrant at “addresses obtained from queries made of numerous online public databases for [Registrant’s] address.” *Id.* The DI went on to detail the multiple attempts to personally serve the OSC on Registrant at the various addresses on February 1, 2021. *Id.* On February 1, 2021, the DI and others from the Tampa District Office “travelled to an address know[n] to be owned and occupied by [Registrant’s] parents” and “despite multiple efforts to knock on the door and placing a phone call to the address, no contact was made with the occupants of the home.” *Id.* Additionally, on February 1, 2021, the DI and another from the Tampa District Office “travelled to an address identified as [Registrant’s] residence” and “were told [Registrant] no longer lived there.” *Id.* Finally, on February 1, 2021, the DI and others from the Tampa District Office “travelled to an address¹ identified as [Registrant’s] residence” and “were told that [Registrant] no longer lived there.” *Id.* The DI concluded that “during [the] attempts to serve [Registrant]” he was informed that “[Registrant’s] registered address was permanently closed.” *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on March 10, 2021. In its RFAA, the Government represents that “more than thirty days have passed since the Order to Show Cause was served on [Registrant] and no request for hearing has been received by DEA.² RFAA, at 1. The Government requests that Registrant’s “Certificate of Registration as a practitioner be revoked and his application for renewal denied, based on [Registrant’s] lack of state authority.” RFAA, at 5.

¹ It appears from the language of the Declaration, that the DI attempted service at two separate potential residences of Registrant on February 1, 2021, in addition to Registrant’s parents’ address.

² The Government also represents that DEA has not received “any other correspondence of [sic] filing” from Registrant. RFAA, at 3.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find the Government's attempts to serve Registrant were legally sufficient. Due process does not require actual notice. *Jones v. Flowers*, 547 U.S. 220, 226 (2006). "[I]t requires only that the Government's effort be reasonably calculated to apprise a party of the pendency of the action." *Dusenbery v. United States*, 534 U.S. 161, 170 (2002) (internal quotations omitted). In this case, the Government first attempted to serve Registrant by mail to his registered address. When the OSC was returned as undeliverable because Registrant was no longer at the address and left no forwarding information, the Government attempted to personally serve Registrant at his registered address, his identified residences, and the address known to be owned and occupied by Registrant's parents, all of which were locations where the Government reasonably believed Registrant would be located. "[T]he Due Process Clause does not require . . . heroic efforts by the Government" to find Registrant. *Id.* I find, therefore, that under the circumstances, the Government's efforts to notify Registrant of the OSC were reasonable and satisfied due process. *See Frederick Silvers, M.D.*, 85 FR 45,442, 45,443 (2020).

I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

FINDINGS OF FACT

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. FD0005593 at the registered address of 14495 University Cove Place, Tampa, FL 33613. RFAA, App. 7, at 1

(Printout of Registration database). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration is in "renewal pending" status. *Id.* at 1.

The Status of Registrant's State License

On November 18, 2019, the Florida Department of Health issued an Order of Emergency Suspension of License (hereinafter, Emergency Suspension). RFAA, App. 4, at 1 and 3. According to the Emergency Suspension, on or about May 23, 2019, Registrant was found guilty by the U.S. District Court for the Middle District of Florida of one count of Conspiracy to Distribute and Dispense Controlled Substances, "not for a legitimate medical purpose and not in the course of professional practice in violation of 21 U.S.C. 846." *Id.* at 2. According to the Emergency Suspension, Florida State law provides that the Florida Department of Health shall issue an Emergency Suspension of "any person licensed under Chapter 458, Florida Statutes [], who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, to [sic] a felony under 21 U.S.C. 846." *Id.* The Emergency Suspension ordered Registrant's license to practice as a physician to be "immediately suspended." *Id.* at 3.

According to Florida's online records, of which I take official notice, Registrant's license is still suspended.³ Florida Department of Health License Verification, <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited date of signature of this Order). Florida's online records show that Registrant's medical license is under emergency suspension and that Registrant is not authorized in Florida to practice medicine. *Id.*

³ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Florida, the state in which Registrant is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006);

Dominick A. Ricci, M.D., 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

According to Florida statute, “A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, [or] dispense . . . a controlled substance.” Fla. Stat. Ann. § 893.05(1)(a) (West, current with chapters from the 2020 Second Regular Session of the 26th Legislature in effect through May 18, 2020). Further, “practitioner,” as defined by Florida statute, includes “a physician licensed under chapter 458.” Fla. Stat. Ann. § 893.02(23) (West, current with chapters from the 2020 Second Regular Session of the 26th Legislature in effect through May 18, 2020).⁴

Here, the undisputed evidence in the record is that Registrant’s license to practice medicine is currently suspended. As such, he is not a “practitioner” as that term is defined by Florida statute. As already discussed, however, a physician must be a practitioner to dispense a controlled substance in Florida. Thus, because Registrant lacks authority to practice medicine in Florida, he is not currently authorized to handle controlled substances in Florida. Accordingly, I will order that Registrant’s DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FD0005593 issued to Kendrick E. Duldulao. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Kendrick E. Duldulao to renew or modify this registration, as well as any other application of Kendrick E. Duldulao, for additional registration in Florida. This Order is effective **[INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

D. Christopher Evans,
Acting Administrator.

⁴ Chapter 458 regulates medical practice.

